# SUPREME COURT OF THE UNITED STATES.

## No. 133.

TIMOTHY L. MACE, PLAINTIFF IN ERROR,

vs.

JARED WELLS.

IN ERROR TO THE SUPREME COURT OF JUDICATURE OF THE STATE OF VERMONT.

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J. & G. S. Gideon, printers.

To all who shall see these presents, greeting:

Know ye, that among the records and proceedings of the supreme court of the county of Orange, in the State of Vermont, there remain the original writ and officer's return thereon, the record of the proceedings, exceptions, and judgment thereon, in the words following, to wit:

*State of Vermont, Orange county:*

Pleas before the honorable supreme court, begun and held at Chelsea, in and for the county of Orange, on the fifth Tuesday next after the fourth Tuesday of January, being the fourth day of March, in the year of our Lord one thousand eight hundred and forty-five.

Present: Honorable Stephen Royce, chief judge.
" Isaac F. Redfield, } Assistant judges.
" Milo L. Bennet, }
" William Hebard, }

JARED WELLS }
vs. }
TIMOTHY L. MACE and trustees. }

Be it remembered, that at a term of the county court, within and for the county of Orange, holden at Chelsea in said county, on the third Tuesday of June, A. D. 1844, Timothy L. Mace, of Newbury, in said county, was summoned to answer unto Jared Wells, of Newbury aforesaid, in a plea of the case; for that, at said Chelsea, on the 6th day of March, A. D. 1844, defendant being indebted to the plaintiff in the sum of *three hundred dollars*, for so much money by the plaintiff before that time paid, laid out, &c., as per writ and declaration on file.

Samuel Hutchins, Timothy Shedd, Charles Hale, Leonard Gale, Elijah Farr, and Abel Underwood, all of said Newbury, were summoned to appear, and answer as trustees of the said Mace. At which term Elijah Farr, esq., appeared as attorney for said plaintiff to prosecute said suit, and A. Underwood, esq., attorney for defendant, when said cause was continued to the next term of said court, to wit, the third Tuesday of December, 1844; and after a full hearing, A. Underwood, summoned as trustee, was discharged without cost, and the court considered that the said Hutchins, Shedd, Hale, Gale, and Farr, are trustees, according to their disclosure, to wit, in the sum of $84 61, to be paid according to contract. And said court further considered that the plaintiff recover of defendant the sum of $206 01 and his cost, taxed at $17 05, to which the defendant excepted. Exceptions were allowed, and the cause ordered to pass to the supreme court.

And now, at this term of said court, said cause came on for hearing; whereupon it is adjudged and considered by said court, that the judgment of the county court aforesaid be affirmed, both as to principal and trustees, with additional cost, whereof he may have execution.

Ex. in P. D. of March 10, 1845.

Attest: CALVIN BLODGETT, *Clerk*.

In testimony of all which I have hereunto set my hand, and the seal of said supreme court, at Chelsea, in said county of Orange, [L. S.] this 5th day of November, in the year of our Lord one thousand eight hundred and forty-five.

CALVIN BLODGETT, *Clerk*.

*State of Vermont, Orange, ss:*

To any sheriff or constable in the State, greeting:

By the authority of the State of Vermont, you are hereby commanded to attach the goods, chattels, or estate, of Timothy L. Mace, of Newbury, in the county of Orange, and State of Vermont, to the value of three hundred dollars, and him notify thereof according to law; and also notify him to appear before the county court next to be holden at Chelsea, within and for the county of Orange, on the third Tuesday of June, A. D. 1844, then and there to answer unto Jared Wells, of Newbury, in the county of Orange, and State of Vermont, in a plea of the case; for that at said Chelsea, on the 6th day of March, 1844, defendant being indebted to the plaintiff in the sum of three hundred dollars, for so much money by the plaintiff before that time paid, laid out, and expended for the defendant, in and about the defendant's business, at his, the defendant's, request; in consideration thereof, then and there promised plaintiff to pay him that sum on demand; yet, though often requested, he's not paid the same, to the damage of the plaintiff, as he say , the sum of three hundred dollars; for the recovery of which, with just costs, the plaintiff brings suit.

And you are further commanded to summon Samuel Hutchins, Timothy Shedd, Charles Hale, Leonard Gale, Elijah Farr, and Abel Underwood, of Newbury, in the county of Orange, trustee of the said T L. Mace, to appear before said court, at the time and place aforesaid, and make disclosure, according to law, of the goods, chattels, rights, or credits of the said T. L. Mace, which the said trustees may have in their hands or possession. Fail not, but make service and return according to law.

Dated at Chelsea, in the county of Orange, this 5th day of March, A. D. one thousand eight hundred and forty-four.

H. TRACY, *Justice of peace*.

E. Farr recognised to the defendant in the sum of fifteen dollars, as surety for costs of prosecution, as the law directs, before me,

H. TRACY, *Justice of peace*.

J. Buchanan recognised to the said trustee in the sum of fifteen dollars, as surety for said trustee's costs, as the law directs, before me,

H. TRACY, *Justice of peace*.

*State of Vermont, Orange county, ss:*

NEWBURY, *March* 6, 1844.

I then served this writ, by lodging a true and attested copy of this writ, with this my return thereon endorsed, in the hand of each of the

within named trustees; and on the 8th day of March, as aforesaid, I attached, as the property of the within named Mace, one stack of wood; and on the same day I left a true and attested copy of this writ, with a list of the property attached, with this my return thereon endorsed, in the hand of the within named Mace.

Attest: JACOB KENT, Jr., *Sheriff*.

| | |
|---|---|
| Travel, 33 miles | $1 98 |
| Bill of fees, 7 copies | 2 94 |
| | $4 92 |

*Orange county court, December term*, 1844.

JARED WELLS
vs.
TIMOTHY L. MACE, and trustees.

Action of assumpsit for money paid.

The parties agree to the following facts in this case: That the plaintiff signed two notes with the defendant, of the dates and tenor following:

"$35 00. WELLS RIVER, *July* 9, 1840.

For value received, I promise to pay Hiram Tracy, or order, thirty-five dollars, in four months, with interest annually.

TIMOTHY L. MACE,
JARED WELLS."

"$157 48. WELLS RIVER, *August* 14, 1840.

For value received, we jointly and severally promise to pay Hutchins & Buchanan, or order, one hundred and fifty-seven dollars and forty-eight cents, in one year, with interest annually.

TIMOTHY L. MACE,
JARED WELLS."

Said first note was paid by said Wells to said Tracy on the 12th day of July, A. D. 1841. Said note was given for the sole and proper debt of said Mace, and Wells signed only as surety; and the whole was a mere matter of accommodation on the part of Wells.

Said second note was given also for the proper debt of said Mace, and was his to pay. Wells was only surety for said Mace, although the note was "jointly and severally," and had no interest in part in the debt. Said note was paid by said Wells on the 6 day of March, A. D. 1844, being, at that date, the sum of one hundred and ninety-four dollars and eleven cents. Said Wells has kept both said notes since they were so taken up by him, and are now in his custody.

That after their signing of said last note, and before the payment of the same, but subsequent to the payment of the first by said Wells, said Mace duly obtained a discharge of his debts as a bankrupt, in pursuance of the provisions of the act of Congress passed August 19, 1841,

commonly called the "Bankrupt law." Said Mace certificate is dated March 22, 1843, a copy of which is annexed, and made a part of the case.

It is agreed the court shall give the *the* same effect to said discharge as if the same were specially pleaded.

Now, if the court shall be of the opinion the plaintiff is entitled to recover on the foregoing facts, judgment is to be rendered for *his* to recover of the defendant the amount of said notes, or either of them, as the court shall adjudge, and his cost; if for both notes, the sum of $248 93; if for the small note, $45 12; if for the largest note, only $203 81; if for neither, then defendant to recover his cost.

A. UNDERWOOD,
*Defendant's attorney.*
J. W. D. PARKER,
*Plaintiff's attorney.*

*Or. co. court, December term*, 1844.

On the foregoing case stated, the court rendered judgment for the plaintiff to recover of defendant $203 81 damages, and his costs; to which decision of the court the defendant excepts; prays his exceptions be allowed.

Exception stayed, and cause pass to supreme court. Exception allowed. Ex'n stayed, and cause passed to the supreme court.

WM. HEBARD, *Judge*.

*United States, ss:*

The President of the United States to the judges of the supreme court of judicature of the State of Vermont, begun and holden at Chelsea, within and for the county of Orange in said State, on the fifth Tuesday next after the fourth Tuesday in January, in the year of our Lord one thousand eight hundred and forty-five, greeting:

Because in the record and process, and also in the rendering the judgment in a suit before you, or some of you, between Jared Wells, of Newbury, in said county of Orange, plaintiff, and Timothy L. Mace, of said Newbury, defendant.

In a plea heard and adjudged in said supreme court of judicature, being the highest court in said State in which a decision of the suit could be had, wherein was drawn in question the construction of a statute of the United States, and the decision was against the right, privilege, and exemption, set up and claimed by said Mace under the said statute, manifest error has intervened, to the great damage of the said Mace, as has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if judgment thereof be given, then, under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday in December

next, at Washington, being the present seat of the National Government; that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, chief justice of the said Supreme Court, at Washington, aforesaid, this 28th day of October, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States the seventieth.

EDW'D H. PRENTISS,

[L. S.] *Clerk of the circuit court of the second circuit of the U. States, within and for the Vermont district.*

Allowed by

CH. K. WILLIAMS,

*Chief judge of the supreme court of the State of Vermont.*

To Jared Wells, of Newbury, in the county of Orange, in said State and district of Vermont, greeting:

Whereas, there has issued from the Supreme Court of the United States a writ of error, bearing date the twenty-eighth day of October, A. D. 1845, directed to the judges of the supreme court of judicature of the State of Vermont, wherein is suggested, that in the record and process, and in the rendering the judgment in a suit between yourself, as plaintiff, and Timothy L. Mace, as defendant, manifest error has intervened, to the great damage of the said Mace; and the said judges are by said writ commanded, under their seal, to distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, together with said writ, so that they may have the same before the chief justice, and the associate justices, of the Supreme Court of the United States, on the first Monday of December, A. D. 1845, at Washington, being the present seat of the National Government; that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

You, therefore, the said Jared Wells, are hereby notified of said writ of error, and of the filing of the same, as aforesaid, and cited to appear, if you see cause, at the said Supreme Court, to be holden as aforesaid, to make answer thereto.

Given under my hand and seal, at Chelsea, this 30th day of October, A. D. 1845, and in the seventieth year of the independence of the United States.

CH. K. WILLIAMS,

*Chief judge of the supreme court of the State of Vermont.*

*United States, Vermont district, ss:*

NEWBURY, *November 17th*, 1845.

Pursuant to the within precept, I lodged a true and attested copy of the same in the hands of the within named Jared Wells, with this my return thereon endorsed.

Attest:

JACOB KENT, JR.,
*Marshal Vermont district.*

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|---|---|
| Service - - - | $2 00 |
| Bill of fees, copy - - | 50 |
| Travel 524 miles, at 5 cts. per mile | 26 20 |
| | $28 70 |

Filed, 1st December, 1845.